

**Access to Microfinance & Improved Implementation of Policy
Reform
(AMIR Program)**

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Law on Plant Variety Protection

Final Report

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Essential Changes to the Draft Plant Variety Law

1. Addition of Complete Definition of Rights

The law fails to include several of the required rights specified in Article 14 of UPOV. If you fail to include the following provisions, the law will not be compliant with the 1991 Act of the UPOV and Jordan will not be able to join UPOV. You should amend Article 16 as follows:

A. The breeder shall enjoy after the registration of the variety the right to protect it, by preventing others not having his consent from doing the following, in respect of the propagating material of the protected variety:

1. Production or reproduction (multiplication),
2. Conditioning for the purpose of propagation,
3. Offering for sale,
4. Selling or other marketing,
5. Exporting,
6. Importing,
7. Stocking for any of the purposes mentioned in (i) to (vi), above.

B. The breeder shall also enjoy the rights specified in paragraph A in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety, unless the breeder has had a reasonable opportunity to exercise his right in relation to the propagating material.

C. The breeder shall have the right to make his authorization subject to conditions and limitations.

D. The breeder shall also enjoy the rights specified in paragraph A and B with respect to:

1. Varieties which are essentially derived from the protected variety, provided that the protected variety is not itself an essentially derived variety. A variety shall be deemed to be essentially derived from another variety ("the initial variety") when it is (i) predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety; (ii) it is clearly distinguishable from the initial variety and (iii) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.
2. Varieties which are not clearly distinguishable in accordance with Article 7 from the protected variety.
3. Varieties whose production requires the repeated use of the protected variety.

- E. Any person who commits any of the acts stated in this Article shall be considered to commit an act of infringement of the breeder's right of the protected variety.

2. Clarify Filing Date Definition

In Article 5(B)(1), the test for distinctness is to be measured from the "date of filing of the application." In paragraph (A)(1), the test for novelty is measured from the "date of filing of the application or the date of the priority." Articles 5(B)(1) and (2) should be changed to refer to the priority date of the application, not merely the filing date.

B.

1. If it is distinct, in the sense that it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the date of the filing of the application or the priority date s the case may be.
2. In particular, the filing in any country of an application for granting of a breeder's right or for the entering in an official register of varieties in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application provided that the application leads to the registration of the variety and to the granting of a breeder's right.

3. Define Filing Date Requirements Apart from Formality Requirements

The requirements to obtain a filing date for an application should be defined in the law. Certain formal requirements other than those needed to obtain a filing date should not deprive the applicant of the ability to obtain the filing date. I recommend reworking Article 8(1) as follows:

Article 8

- A. The date of receiving the application by the Registrar shall be considered the date of filing, provided that the application contains the following elements:
 - (a) the name and address of the applicant and, where relevant, his procedural representative;
 - (b) the name and address of the breeder, if he is not the applicant;
 - (c) the identification of the botanical taxon;
 - (d) the denomination proposed for the variety, or a provisional designation provided by the breeder;
 - (e) where the priority of an earlier application is claimed, the Contracting Party with which the application was filed and the filing date;
 - (f) a technical description of the variety;
 - (g) proof of payment of the application fee; and
 - (h) a sample of the variety subject to registration.
- B. Where the Registrar finds that the application has not fulfilled the requirements stated in paragraph (A) of this Article, he shall invite the applicant to fulfill such requirements or to make the necessary amendments

within thirty days of notification, and shall record the date of fulfilling such requirements as the filing date, otherwise the Registrar may consider the applicant as abandoning the application, and his decision maybe appealed to the High Court of Justices within sixty days of notification.

4. Clarify Basis for Objecting to Grant

Objections to the grant of the right may only be grounded on non-compliance with the conditions of protection. You need to add this provision into article 13.

Article 13 (revised)

Any person shall have the right to file an objection to the Registrar for the registration of any new plant variety within ninety days of the date of the publication in the Official Gazette of the primary approval to accept the variety registration. The objections may only be based upon the allegation that the variety is not new, distinct, uniform or stable, or that the applicant is not entitled to protection. The objection procedures and the cases to extend the objection period and the notifications will be determined in a Regulation issued for this purpose.

5. Compulsory Licensing Conditions

The basis for granting a compulsory license under article 22 is not clearly defined. You should amend paragraph 22(1) as follows:

The Minister may, upon a recommendation from the Registrar, grant others than the breeder, and without his consent, a license for the exploitation of the variety where he determines that this is the only means for addressing a public interest need related to the essential food security of the Kingdom.